IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.MC.No. 3630 of 2003(C)

(CRIME NO.420/2000 OF TALIPARAMBA POLICE STATION)

PETITIONER: ACCUSED NO.1

CEN/TCM(GCE) SATHYANATHAN A
ARMY NO.14632872 K, ENNAZHIYIL HOUSE,
MURIYATHODE, P.O.ARIL, PATTURVAM, KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

ADDL.2ND RESPONDENT IMPLEADED:

NILANKOL KANNAN, S/O. GOPALAN,
MURIYATHODE, PATTUVAM VILLAGE,
POST PATTUVAM, KANNUR DIST.

(ADDL.R2 IMPLEADED AS PER ORDER DT. 28-8-03 IN CMP 8528/03)
R1 BY P.P. SRI K.C.SANTHOSH KUMAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.4602/03 IN CRL.M.C.3630/2003

DISMISSED.

9-8-2007 SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN, J.

CRL.M.C.No.3630 of 2003

Dated this the 9th day of August 2007

ORDER

Petitioner is the Ist accused in Crime No.420 of 2000 of Taliparamba police station. The allegation against the petitioner and other accused is that the de facto complainant was restrained by holding him on 28-9-2000 when he was about to go for his work and the petitioner inflicted injuries on the victim by using a knife which resulted in injuries mentioned in annexure IV accident register and wound certificate dated 18-10-2000 and on the basis of the F.I Statement given by the de facto complainant-the victim, crime No. 420/2000 was registered for the offences punishable under sections 341 and 324 read with 34 of the I.P.C. Subsequently, a further statement of the victim was recorded on the basis of which section 307 of I.P.C. was incorporated. The petitioner now challenge the incorporation of section 307, on the ground that no offence under section 307 of IPC is disclosed.

2. I have heard the counsel appearing for the petitioner and also the learned Public Prosecutor. According to the counsel appearing for the petitioner, the further statement of the victim was recorded after 14 days from the date of the incident and also the recording of the FIS. The delay is not properly explained. The counsel for the petitioner submit that the further statement was recorded as a result of an afterthought. The counsel invited my attention to annexure 4, the accident register and would certificate. According to annexure 4, the accident register and wound certificate the injury noted therein is a skin deep lacerated wound over the left 7^{th} inter costal region in anterior axillary line and also deep a lacerated wound in the posterior aspect of the left arm about 5 x 0.5 cm. According to the petitioner, on the basis of the above injuries , it cannot be said that an offence under section 307 of IPC is disclosed.

3. On the other hand, the learned Public Prosecutor on the basis of the FIS submitted that the

attempt was to commit murder of the victim but the injury happened to fall on the left side of his body over the left 7th inter costal region in anterior axillary line. So according to the learned Public Prosecutor, the offence under section 307 of IPC will lie against the petitioner.

4. On going by the materials available on record, this court is not in a position to come to a conclusion whether an offence under section 307 of IPC is disclosed or not and it is not proper for this Court to enter into a finding on merit, with respect to the contention fortified as the same is likely to affect either the defence of the prosecution. In order to attract section 307 of IPC, the nature of the injury alone cannot be fixed as a criteria. It is for the trial court to come to such conclusion, on the basis of the materials and evidence brought on record during the trial and to find out what are the offences disclosed against the accused. Hence, I am not proposed to go into the merits of the prosecution case. It is open to

the accused to raise all his contentions at the time of framing charge under section 227 of Cr.P.C. Therefore the above Crl. M.C. lacks merit and the same is dismissed subject to the above observation.

V.K.MOHANAN, JUDGE.

Kvm/

V.K.MOHANAN, J.

Crl.M.C.No.3630 of 2003

Order

Dated 9-8-2007